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Assembly
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JEAN FULLER
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February 12, 2010

Steven Tharatt, M.D.
Director
Emergency Medical Services Authority
1930 9th Street
Sacramento, CA 95811-7043

RE: Review Criteria and Policy for Transportation and Exclusive Operating Area
Components of the EMS Plan

Dear Dr. Tharatt,

I am writing concerning the "Review Criteria and Policy for Transportation and Exclusive Operating Area Components of the EMS Plan" (Policy) circulated for comment on or about December 7th, 2009 by the California Emergency Medical Service Authority (EMSA).

I understand that one of the chief purposes of the Policy is to establish binding guidelines and rules for the establishment and administration of exclusive operating areas for medical transportation providers throughout California.

Based upon my office's preliminary review of the Policy, I have several questions:

1. Does EMSA propose the Policy as a rule or standard of general application of a modification or supplement to a rule that has previously been adopted pursuant to the California Administrative Procedure Act (APA)?
2. Does EMSA view the purpose of the Policy, once adopted, to implement, interpret, or make specific the laws enforced or administered by EMS or to govern EMS's procedures regarding exclusive operating areas?
3. Has notice of the Policy been published in the California Regulatory Notice Register? If not, is there any plan by EMSA to do so?
4. Has the Policy been expressly exempted by statute from the requirement that it be adopted as a "regulation" pursuant to the APA?

5. Per Health and Safety Code § 1797.224, the authority to create exclusive operating areas, either through a competitive bidding process or grandfathering of existing providers, resides with the local EMS Agency. Where does EMSA derive its authority to usurp the local counties' legislative prerogatives?

6. Finally, the California EMS Act has been in existence for 30 years. Since its enactment, EMSA has declined to adopt, among other things, any rules, regulations or guidelines of general applicability defining an acceptable interval for use of a "competitive process" by a local EMS agency. I am curious to know what, if anything, has occurred in the recent past which has suggested to EMSA the need for a set of rules and regulations as sweeping as the Policy.

The Policy is a significant initiative by EMSA, with far-reaching implications. The Policy obviously addresses matters of paramount importance to the people of California and EMSA's numerous other constituencies. I therefore assume that you share my interest in ensuring that, if required by law, the Policy is adopted pursuant to the formal procedures established by the APA and is not promulgated as an "underground" regulation which would be prohibited by California law.

Accordingly, I ask that you give your prompt attention to my questions. I look forward to your timely response to this letter.

Sincerely,



JEAN FULLER
Assemblymember, 32nd District

JF:bw